IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 909 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

VALLABH BHIMJI

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Appearance:

Ms. Harsha Devani, A.P.P. for the appellant.

MR MJ BUDDHBHATTI for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE D.P.BUCH

Date of decision: 12/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

Acquittal of the respondents of the offences punishable under sections 302 read with section 34 of the Indian Penal Code recorded by the learned Sessions Judge, Amreli vide judgment dated May 31, 1985 rendered in Sessions Case No. 43/84, is subject matter of challenge in the present appeal, which is filed under section 378 of the Code of Criminal Procedure.

2. Complainant Kanabhai Khodabhai is a resident of village Nadala, Taluka : Babara, District : Amreli. Deceased Dalpatram Narbheram Bavaji was also a resident of village Nadala. The deceased was running a fair price shop at village Nadala; whereas his son was running a fair price shop at village Thorkhana. The incident took place on June 19, 1984. On that day, the deceased wanted to go to Babara town for the purpose of purchase of sugar for the fair price shop of his son and started for Babara town on his motorcycle at about 9.00 A.M. in the morning. Complainant Kanabhai Khodabhai also wanted to purchase household articles from Babara town and, therefore, requested the deceased to give lift to him. The deceased agreed to give lift and that is how the deceased and the complainant went to Babara town on the motor-cycle of the deceased. After purchase of sugar, the deceased got the same loaded in a rickshaw for being delivered at the fair price shop of his son, which was situated at village Thorkhan and was thereafter returning to his village Nadala on his motorcycle with complainant as pillion rider. When they were at a distance of 3 to 4 fields from village Nadala, they found a Matador coming from the opposite direction at a slow speed and as it was not possible for deceased Dalpatram to drive ahead, he had taken his motor-cycle on a side. At that time, someone fired shot from back of fencing of Kalkani's field. As a result of the shot, the deceased as well as the complainant fell down. The motorcycle also fell down on the road. According to the complainant, the deceased informed him that he had received shot injury on his neck and, therefore, the complainant should collect persons from nearby. The complainant went to village Nadala and informed witness Shantaben, who was tenant of the deceased. The complainant followed her with the nephew of the deceased and when he reached the scene of incident, he found that the deceased had also received knife injuries on his neck. According to the complainant, Shantaben informed him that he had seen the respondents running away on a motorcycle. Thereafter the complaint was lodged by the complainant at Babara Police Station, which was investigated by P.S.I. Mr. Jadeja. On completion of investigation, the respondents were

chargesheeted for the offence punishable under section 302 read with section 34 of I.P.C. As the offence under section 302 I.P.C. is exclusively triable by the Court of Sessions , the case was committed to Sessions Court, where it was registered as Sessions Case No. 43/84. The learned Sessions Judge framed charge at Exh.1 under section 302 read with section 34 of I.P.C. against the respondents, which was read over and explained to them. The respondents did not plead guilty to the charge and claimed to be tried. Therefore, in order to prove its case, prosecution examined; (1) Kanabhai Khodabhai as P.W.3 at Exh.13, (2) Shantaben, who was tenant of the deceased as P.W.4 at Exh.37; (3) Ravajibhai as P.W.8 at Exh.41; (4) Rameshbhai, who is alleged to have brought Shantaben from village Nadala to the place of incident, as P.W.9 Exh.42; (5) Hasan Raheman, who is alleged to have brought Shantaben back to her village Nadala from the place of incident, as P.W. 10 at Exh.43; and (6) Gabhrubhai Kathad as P.W.11 at Exh.44, to prove discovery of Tamancha and knife at the instance of respondent no.2, (7) the Investigating Officer, (8) Medical Officer and (9) Circle Inspector, who had prepared map of scene of offence as well as produced documentary evidence, such as, F.I.R., postmortem notes, panchnamas, inquest report etc., to prove its case. On appreciation of evidence led by the prosecution, the learned Judge concluded that the charge against the respondents was not proved beyond reasonable doubt and has acquitted the respondents vide judgment dated May 31, 1985, giving rise to the present appeal.

3. Ms. Harsha Devani, learned A.P.P. has taken us through the entire evidence on record. The learned A.P.P. submitted that the evidence of complainant Kanabhai read with the evidence of Shantaben, who was tenant of the deceased, as well as evidence of Ravajibhai, who was an eye witness, would indicate that respondent no.1 had fired shot at the deceased, as a result of which he died and, therefore, the case of prosecution ought to have been accepted by the learned Sessions Judge. What was claimed was that the prosecution case has been proved by the testimony of witnesses who are not related to the deceased and, therefore, the appeal should be accepted.

4. Mr. M.J.Budhbhatti, learned counsel for the respondents submitted that neither the testimony of complainant Kanabhai Khodabhai, nor the testimony of Shantaben or that of so-called eye witness Ravajibhai, is reliable nor does the said testimonies prove the prosecution case at all against the respondents and as

two views are reasonably possible, the appeal should be dismissed.

5. We have taken into consideration the submissions advanced at the Bar and evidence on record. Complainant Kanabhai Khodabhai in his evidence has nowhere stated that he had seen accused no.1 firing shot from his Tamancha at the deceased. What he has claimed in his evidence is that on receiving shot injury, he and deceased had fallen down and he had informed respondent no.1 that somebody had caused injury to the deceased by fire arm, but the respondent no.1 had asked him to mind his own business. If he had seen respondent no.1 causing injury to the deceased by a fire arm, this would not have been his conduct, but he would have tried to confront respondent no.1 and know from him as to why he had caused bullet injury to the deceased. This witness also does not claim in his evidence that he had either seen Tamancha in the hands of respondent no.1, nor does he refer to the presence of two other respondents. Though he claims that he had gone to Babara town for the purpose of purchasing household articles, the panchnama of place of incident does not indicate that any household article was found at the place of incident. Moreover, as admitted by him, this was the first occasion on which he had requested the deceased to give lift. On overall view of evidence of this witness, the learned Sessions Judge, in our opinion, was justified in holding that the story told by this witness that he had accompanied the deceased to Babara town, was highly improbable. The conduct of this witness is not free from a doubt. According to him, after the incident he had gone to village Nadala, but had not informed either the nephew or other relatives of the deceased, but had first informed Shantaben who was tenant of the deceased. Even if the evidence of Kanabhai Khodabhai is accepted in its entirety, we are of the opinion that by his evidence, no case is made out against any of the respondents. Coming to the evidence of Shantaben, we find that she claims that on reaching the place of incident, she had found the respondents running away on a motor-cycle. The map of place of incident prepared by the Circle Officer indicates that the distance between the place of incident and village Nadala is roughly about 1 K.M. and Shantaben must have taken fifteen to twenty minutes to reach the place of incident. Therefore, it is not probable that after causing injury to the deceased, the respondents would remain at the place of incident for fifteen to twenty minutes so as to be identified by any one later on. Witness Ravajibhai is the only witness, who claims to be an eye witness, but he has not supported the prosecution case and is treated

hostile by the prosecution. Witness Gabhru Kathad examined by the prosecution for discovery of Tamancha and knife at the instance of respondent no.2, also does not help the prosecution case because according to the prosecution, shot was fired from Tamancha by respondent no.1; whereas knife injuries were caused to the deceased by respondent no.3 and, therefore, discovery of weapons of offence at the instance of respondent no.2 cannot be treated as connecting respondents no.1 & 3 with the offence of murder, in any manner at all. On overall view of the matter, we are satisfied that the learned Sessions Judge has rightly appreciated the evidence on record and recorded acquittal of the respondents. This is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of learned Judge who had opportunity to observe the demeanour of the witnesses. As we are in general agreement with the view expressed by the learned Judge, we do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the Trial Court, and in our view, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the present case. This is so, in view of the decisions rendered by the Supreme Court in (1) Girija Nandini Devi & Ors. v. Bijendra Narain Chaudhary, A.I.R. 1967 S.C. 1124, and (2) State of Karnataka v. Hema Reddy and anothers, A.I.R. 1981 S.C. 1417. Although in an appeal from an order of acquittal, the powers of the High Court as appellate Court to reassess the evidence and reach its own conclusions are as extensive as in an appeal against an order of conviction, yet, as a rule of prudence, the appellate Court should always give proper weight and consideration to such matters as (i) the views of the trial Judge as to the credibility of the witnesses; (ii) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (iii) the right of the accused to the benefit of any doubt; and (iv) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge, who had the advantage of observing demeanour of the witnesses. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondents. Suffice it to say that the learned Judge has given cogent and convincing reasons for

acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Judge in order to convince us to take the view contrary to the one already taken by the learned Judge. The appeal, therefore, cannot be accepted and is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed.

(J.M.Panchal,J.)

( D.P. Buch, J.)

(patel)